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RELATING TO TAXATION; SETTING JANUARY 1, 2005 AS THE INITIATION DATE OF THE NEXT SERIES OF NONTAXABLE TRANSACTION CERTIFICATES; AMENDING SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS-- RENEWAL.--

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate. When the seller or lessor

1 accepts a nontaxable transaction certificate within the required time and in good faith
2 that the buyer or lessee will employ the property or service transferred in a nontaxable
3 manner, the properly executed nontaxable transaction certificate shall be conclusive
4 evidence, and the only material evidence, that the proceeds from the transaction are
5 deductible from the seller's or lessor's gross receipts.

6 B. Properly executed documents required to support the deductions
7 provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the
8 possession of the seller at the time the return is due for receipts from the transactions.

9 If the seller is not in possession of these documents within sixty days from the date
10 that the notice requiring possession of these documents is given to the seller by the
11 department, deductions claimed by the seller or lessor that require delivery of these
12 documents shall be disallowed. These documents shall contain the information and be
13 in a form prescribed by the department. When the seller accepts these documents
14 within the required time and in good faith that the buyer will employ the property or
15 service transferred in a nontaxable manner, the properly executed documents shall be
16 conclusive evidence, and the only material evidence, that the proceeds from the
17 transaction are deductible from the seller's gross receipts.

18 C. Notice, as used in this section, is sufficient if the notice is mailed or
19 served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the
20 department under this section shall not be given prior to the commencement of an
21 audit of the seller required to be in possession of the documents.

22 D. On January 1, 2005, every nontaxable transaction certificate,
23 except for nontaxable transaction certificates of the series applicable to the twelve-
24 year period beginning January 1, 2005 and issued by the department prior to that
25 date, is void with respect to transactions after December 31, 2004. The department
shall issue separate series of nontaxable transaction certificates for the twelve-year
period beginning January 1, 2005 and for each twelve-year period beginning on
January 1 of every twelfth year succeeding calendar year 2005. A series of
nontaxable transaction certificates issued by the department for any twelve-year

1 period may be executed by buyers or lessees for transactions occurring within or prior
2 to that twelve-year period but is not valid for transactions occurring after that twelve-
3 year period, except the nontaxable transaction certificates issued by the department
4 for the period January 1, 1992 to December 31, 2001 may be executed by buyers or
5 lessees for transactions occurring prior to December 31, 2004. For administrative
6 convenience, the department may accept and approve qualifying applications for the
7 privilege of executing nontaxable transaction certificates and pre-issue certificates of
8 any series within the six-month period immediately preceding the beginning of the
9 twelve-year period to which the series of nontaxable transaction certificates applies.

10 E. To exercise the privilege of executing appropriate nontaxable
11 transaction certificates, a buyer or lessee shall apply to the department for permission
12 to execute nontaxable transaction certificates, except with respect to documents
13 issued by other states or the multistate tax commission that the department has
14 deemed to be nontaxable transaction certificates. If a person is shown on the
15 department's records to be a delinquent taxpayer or to have a non-filed period, the
16 department may refuse to approve the application of the person until the person has
17 filed returns for all non-filed periods and is no longer shown to be a delinquent
18 taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA
19 1978. Upon the department's approval of the application, the buyer or lessee may
20 request appropriate nontaxable transaction certificates for execution by the buyer or
21 lessee; provided that if a person is shown on the department's records to be a
22 delinquent taxpayer or to have a non-filed period, the department may refuse to issue
23 nontaxable transaction certificates to the person until the person has filed returns for
24 all non-filed periods and is no longer shown to be a delinquent taxpayer. The taxpayer
25 may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may
require a buyer or lessee requesting and receiving nontaxable transaction certificates
for execution by that buyer or lessee to report to the department the names,
addresses and identification numbers assigned by the department of the sellers and

1 lessors to whom they have delivered nontaxable transaction certificates. The
2 department may require a seller or lessor engaged in business in New Mexico to report
3 to the department the names, addresses and federal employer identification numbers
4 or state identification numbers for tax purposes issued by the department of the
5 buyers or lessees from whom the seller or lessor has accepted nontaxable transaction
6 certificates."

6 Section 2. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144,
7 Section 44, as amended) is amended to read:

8 "7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS
9 RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

10 A. Receipts from selling tangible personal property to the United
11 States or New Mexico or any governmental unit or subdivision, agency, department or
12 instrumentality thereof may be deducted from gross receipts or from governmental
13 gross receipts. Unless contrary to federal law, the deduction provided by this
14 subsection does not apply to:

- 14 (1) receipts from selling metalliferous mineral ore;
- 15 (2) receipts from selling tangible personal property that is or
16 will be incorporated into a metropolitan redevelopment project created under the
17 Metropolitan Redevelopment Code;
- 18 (3) receipts from selling construction material; or
- 19 (4) that portion of the receipts from performing a "service" that
20 reflects the value of tangible personal property utilized or produced in performance of
21 such service.

21 B. Receipts from selling tangible personal property for any purpose to
22 an Indian tribe, nation or pueblo or any governmental subdivision, agency, department
23 or instrumentality thereof for use on Indian reservations or pueblo grants may be
24 deducted from gross receipts or from governmental gross receipts.

25 C. When a seller, in good faith, deducts receipts for tangible personal
property sold to the state or any governmental unit, subdivision, agency, department

1 or instrumentality thereof, after receiving written assurances from the buyer's
2 representative that the property sold is not construction material, the department shall
3 not assert in a later assessment or audit of the seller that the receipts are not
4 deductible pursuant to Paragraph (3) of Subsection A of this section."

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